

I.C. No. 17-046144, Michael Horne, Plaintiff, v. Forsyth County Sheriff's Office, Defendant-Employer, and PMA Companies, Defendant-Third Party Administrator

THIS COMPROMISE SETTLEMENT AGREEMENT, A FINAL SETTLEMENT AND RELEASE, was made and entered into on the 12th day of February, 2018, by and between Plaintiff and Defendants.

On October 22, 2017, Plaintiff, who was then age 25 years old with a date of birth of 10/27/1991, was employed as a Detention Officer by Defendant-Employer and had been so employed for approximately seven months. Plaintiff's approximate average weekly wage on October 22, 2017 was \$685.09, resulting in a compensation rate of \$456.72. On that date, Plaintiff alleges that he tripped over a hole and fell injuring his neck and lower back.

Defendants deny that the fall was an accident and denied the claim pursuant to a Form 61, filed November 14, 2017. No benefits have been paid.

[illegible]

The parties expressly understand and agree that the foregoing paragraphs concerning Plaintiff's medical treatment are intended only as a summary of the course of that treatment. The examinations, evaluations, and treatment received by Plaintiff are more fully set forth in the medical and rehabilitation reports submitted to the North Carolina Industrial Commission along with this agreement as Exhibit A. Plaintiff and Defendants certify that said exhibit contains all medical and rehabilitation reports relative to Plaintiff's alleged October 22, 2017 injury of which they now have knowledge and possession. The contents of those reports are incorporated here by reference as if fully set forth. The parties further certify that Exhibit A constitutes a full and complete copy of all relevant and material medical, vocational, and rehabilitation reports known to exist as required by N.C.G.S. § 97-82 and 04 NCAC 10A .0502. Plaintiff acknowledges that Defendants have agreed to the terms of this settlement and will make the payments called for reasonably relying upon that certification. The parties to this agreement waive

further hearings before the North Carolina Industrial Commission and, in presenting this agreement for approval, represent that they have made available to the Commission with said agreement all relevant and material medical, vocational, and rehabilitation reports known to exist. In this connection, the parties stipulate and agree to waive any rights they may have to contest the approval of this agreement based upon any failure to provide copies of medical, vocational, or rehabilitation records to the Industrial Commission with this agreement for approval.

After the alleged injury of October 22, 2017, Plaintiff returned to work. He has since been terminated and is not known to be currently employed.

By signing this document, Plaintiff, by and through counsel, certifies to Defendants and to the North Carolina Industrial Commission that he makes no further claim for total or partial wage loss as a result of his October 22, 2017 injury.

Plaintiff contends that he sustained a compensable accident arising out of and in the course of his employment, and is entitled to substantial benefits under the North Carolina Workers' Compensation Act, including, but not limited to compensation for payment of medical bills, additional treatment for injuries to the neck and back, temporary total disability compensation and compensation for anticipated permanent partial impairment ratings to any and all affected body parts.

Defendants contend that Plaintiff did not have an accident, did not sustain an injury, that his claim for workers' compensation benefits was reasonably denied, and that he is therefore not entitled to any benefits.

The parties have conferred together informally, Plaintiff being represented by

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Oxner + Permar, PLLC, Attorneys of Greensboro, North Carolina, and Defendants being represented by Goldberg Segalla, LLP., Attorneys of Raleigh, North Carolina, and have decided that it is in the best interests of all concerned to enter into an agreement where all matters and things in controversy arising out of the alleged October 22, 2017 injury would be settled with the payment to Plaintiff of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$17,500.00), in one lump sum, without commutation, in settlement of all claims under the North Carolina Workers' Compensation Act arising prior to the date of this agreement, whether asserted or unasserted. This sum represents the settlement of a disputed matter and not an admission of liability, and is in lieu of any disability or other workers' compensation benefits, including but not limited to those which might otherwise have been claimed for a change in condition or progression of any condition which might develop in the future, medical, death or any other benefits, which are or may be due Plaintiff, his dependents, his estate or any other representative of Plaintiff now or at any time in the future pursuant to the North Carolina Workers' Compensation Act. The parties and their respective counsel also stipulate and agree that this settlement is fair and just, that the interests of all parties and of any person or entity, including a health benefit plan, that paid any of the medical expenses of Plaintiff have been considered, and that there is a need for finality in this litigation. The parties and their respective counsel also stipulate and agree that Plaintiff further relinquishes any employment rights Plaintiff may have acquired with regard to past employment with Defendant-Employer or to any application for future employment with Defendant-Employer or Forsyth County Sheriff's Office.

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Anticipating an attorney's fee of 25%, the balance of THIRTEEN THOUSAND ONE HUNDRED TWENTY-FIVE DOLLARS (\$13,125.00) as the balance of future compensation in payments pro-rated over Plaintiff's life expectancy of 52.2 years, based on Plaintiff's date of birth of [REDACTED], according to the Mortality Tables Codified in N.C. Gen. Stat. §8-46. Plaintiff's life expectancy of 52.2 years equals 2,714.4 weeks and yields payments of \$4.84 per week.

The parties have considered Medicare's interests with regard to the settlement of the medical portion of this claim, as required under the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)(2), *et seq.*, and the current MSP regulations, codified at 42 C.F.R. § 411.20, *et seq.*

The parties have considered whether Medicare has made any payment, conditioned upon possible reimbursement, for medical services allegedly related to the October 22, 2017 injury for which Defendant-Insurer may be deemed responsible by Medicare as a primary payer. Plaintiff represents and stipulates that Medicare has not paid any medical bills whatsoever, whether associated with the October 22, 2017 injury or otherwise, since Plaintiff is not a Medicare beneficiary and is not Medicare eligible. Accordingly, the parties rely upon Plaintiff's representation that Medicare has not made any payment for medical care on behalf of Plaintiff and there is no possible Medicare conditional payment issue. Plaintiff agrees to hold Defendants harmless for any loss of Medicare benefits or for any recovery the Centers for Medicare and Medicaid Services ("CMS") and/or the Benefits Coordination & Recovery Center ("BCRC") may pursue based upon any incorrect or inaccurate information provided by Plaintiff. Plaintiff further

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agrees that based upon the parties' consideration of Medicare's reimbursement rights in the negotiated terms of this settlement, there is no valid right to a private cause of action for damages because Defendants have not failed to provide for primary payment and/or appropriate reimbursement.

The parties have further agreed to resolve the portion of Plaintiff's claim involving future medical treatment. It is not the intention of the parties to this agreement that responsibility for future medical treatment related to the October 22, 2017 injury will be shifted from Defendants to Medicare or the federal government. The parties understand that in certain circumstances, a Workers' Compensation Medicare Set-Aside Arrangement ("WCMSA") may be necessary to protect the interests of Medicare and/or Plaintiff as a current or future Medicare beneficiary in conjunction with the full and final settlement of a workers' compensation claim. The parties have considered and evaluated whether a WCMSA should be established in this case and have decided that one should not. Considerable attention has been given by all parties to Plaintiff's potential for future entitlement to such benefits and reasonable consideration of Medicare's interest.

Defendants initially provided medical care, but since the date of the denial, have paid no medical expenses related to Plaintiff's October 22, 2017 due to the disputed nature of those expenses. Pursuant to 04 NCAC 10A .0502(b), the list of disputed medical expenses and the respective party responsible for the payment(s) of the disputed medical expense(s), if applicable, is attached as Exhibit B. The parties agree that Plaintiff is responsible for payment of the disputed medical expenses listed in

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Exhibit B, and that he will notify the respective unpaid medical provider in writing of its responsibility to pay. The parties and their respective counsel stipulate and agree that the positions of all parties to this agreement are reasonable as to the payment of medical expenses. Any obligation of any party to pay an unpaid disputed medical expense pursuant to a settlement agreement does not require payment of any medical expense in excess of the maximum allowed under N.C.G.S. § 97-26.

Plaintiff certifies that any and all known liens or potential liens involving Medicare, Medicaid, the Internal Revenue Service, Child Support Enforcement, or other agencies of federal, state or local government have been revealed to Defendants, and Plaintiff agrees to hold harmless Defendants regarding any such liens. The parties acknowledge that Plaintiff's certification contained in this paragraph is a material representation relied upon by Defendants in entering into this agreement.

Plaintiff has agreed to settle his case for less than the full amount of reasonably anticipated future benefits for a variety of reasons. Settlement will provide for a known amount of recovery, eliminating uncertainty as to the future, such as the possibility that Plaintiff will die in an accident or from an unrelated health problem. Further, Plaintiff will derive emotional benefit from the elimination of the workers' compensation system from his life and from the increased control he will have over his medical treatment and other aspects of his life.

Plaintiff represents to the North Carolina Industrial Commission that by execution of this agreement, he knowingly and intentionally waives his right to further benefits

under the North Carolina Workers' Compensation Act, but it is agreed that no rights other than those arising under that Act are compromised or released by this Agreement.

The parties acknowledge that any opinions stated by physicians or other medical providers regarding the nature and extent of Plaintiff's medical condition and disability are opinions, not facts, and that, to the extent they are relying on those opinions, they are doing so with the knowledge that such opinions may be incorrect. Plaintiff further acknowledges that his condition may be progressive and that recovery is uncertain and indefinite. Accordingly, Plaintiff and Defendants agree that they will not seek to set aside this settlement agreement in the future on the basis that any party, in entering into this agreement, relied on incorrect statements or opinions from physicians or other medical providers regarding the diagnosis or prognosis of any injury, whether now known or unknown, resulting from the alleged October 22, 2017 injury.

Plaintiff agrees that in making this Agreement, he was not influenced by any representations or statements regarding his condition, the nature of his injuries, or any other matters concerning his claim before the North Carolina Industrial Commission, made by any person, firm, corporation, physician, or surgeon acting for or on behalf of Defendants; that the facts in connection with his employment and with his resulting injuries and impaired physical condition, if any, are fully known, understood, and comprehended by Plaintiff, and that his rights under the Workers' Compensation Act are thoroughly and completely understood by him.

In consideration of the compensation payments recited, Plaintiff has and does release and forever discharge not only for himself but also for his heirs, next of kin,

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and/or personal representative(s), Defendants respectively, of and from any and all and every manner of action and actions, cause or causes of action, suits, debts, dues and sums of money, judgments, demands, and claims, which against Defendants, he ever had or may have by reason of or growing out of the terms and provisions of the North Carolina Workers' Compensation Act, on account of the alleged October 22, 2017 injury, which give rise to this claim for compensation and for any subsequent disability sustained by him, or medical bills incurred by him.

Plaintiff expressly agrees that any and all rights which he may have or which may arise as a result of any change of condition under and by virtue of the provisions of Chapter 97 of the North Carolina General Statutes, giving him the right to reopen this claim for compensation or medical benefits at any time within two years from the date of the last payment of compensation under an Award by the North Carolina Industrial Commission are waived, and Defendants respectively, are expressly and particularly released from any and all further liability to him by reason of any right or claim Plaintiff, Plaintiff's heirs, next of kin, and/or personal representative(s) may have, or which may arise, to reopen this action and claim further benefits, whether compensation, medical, or otherwise.

All parties to this agreement specifically stipulate that the North Carolina Industrial Commission may consider the matters now before it in passing on this compromise agreement, subject to the conditions previously stated. This agreement is made expressly subject to the approval of the North Carolina Industrial Commission by its award duly issued, and the same shall be binding upon all parties when approved by

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said Commission. All parties further agree that, in the event the North Carolina Industrial Commission does not approve this agreement, nothing contained here shall be construed as an admission of liability in any future proceedings before the North Carolina Industrial Commission or any other tribunal.

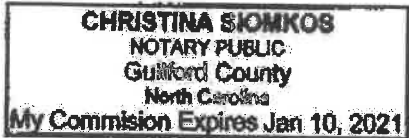
It is further understood that the rights and remedies of Plaintiff against Defendants as a result of Plaintiff's employment and his alleged October 22, 2017 injury are governed and controlled by the North Carolina Workers' Compensation Act, and that all of such rights are being compromised, adjusted and forever resolved.

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By the signatures below, Plaintiff and Defendants accept the terms of the settlement described here.



Michael Home
Michael Home, Plaintiff

Consented To:

Grace Linthicum
Grace Linthicum, Attorney for Plaintiff
North Carolina State Bar No. 49490

NORTH CAROLINA
Guilford COUNTY

Personally appeared before me this 23 day of February, 2018, Michael Home, who, being first duly sworn, acknowledged the execution of the foregoing agreement for the purposes and considerations therein expressed.

My Commission expires:

1/10/2021

[Signature]
Notary Public

Forsyth County Sheriff's Office
Defendant-Employer

BY:

[Signature]
Gregory S. Homer, Attorney for
Defendants
North Carolina State Bar No. 35346

PMA Companies,
Defendant-Third Party Administrator

BY:

[Signature]
Gregory S. Homer, Attorney for
Defendants
North Carolina State Bar No. 35346